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November 1, 2019

**VIA ECF**

The Honorable Judge Valerie Caproni  
Thurgood Marshall United States Courthouse  
40 Foley Square  
New York, NY 10007

**Re: Strike 3 Holdings, LLC v. John Doe Subscriber Assigned IP Address  
24.104.252.172; Southern District of New York, Case No. 1:18-cv-02648-VEC; Joint  
Discovery Report**

Dear Judge Caproni:

The James Law Firm, PLLC represents Plaintiff, Strike 3 Holdings, LLC, in the above referenced matter. And, Barton LLP, represents Defendant, John Doe Subscriber Assigned IP Address 24.104.252.172. On September 30, 2019, this Court entered an order extending the case management deadlines. Dkt. No. 41. In that same order the Court instructed the parties to provide a joint discovery report beginning on November 1, 2019 and thereafter on the first business day of each month.

**Plaintiff:**

Since entry of the Court's Order, on October 14, 2019, Defendant responded to Plaintiff's First Set of Requests for Production and First Set of Interrogatories. Plaintiff reviewed Defendant's Responses, and on October 30, 2019, Plaintiff sent Defendant a letter outlining numerous deficiencies in Defendant's responses. The parties are in the process of determining a date and time to hold a teleconference regarding the discovery disputes outlined therein.

On October 3, 2019, Twitter responded to the remaining portion of Plaintiff's subpoena concerning the Disputed Twitter Account. The production confirms that a number of IP addresses used by the Confirmed Twitter Account match the IP addresses used by the Disputed Twitter Account. Further, the e-mail address associated with the Disputed Twitter Account is the same as the e-mail address associated with the Confirmed Twitter Account.<sup>1</sup>

Additionally, on September 23, 2019, Plaintiff sent Defendant a proposed subpoena to Defendant's ISP seeking production of documents containing his personally identifiable information including any copyright infringement notices sent to Defendant during a relevant time period. Disclosure of a subscriber's personally identifiable information is protected by the Cable Communications Policy Act ("Communications Act"). See 47 U.S.C. § 551(c)(1).

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<sup>1</sup> Although one email is listed with the domain "@hotmail.com" and the other is listed as "@outlook.com", the handle/local-part to those e-mail addresses is identical, and Hotmail and Outlook e-mails merged long ago. See <https://www.msoutlook.info/question/switch-to-outlookcom-address>

Indeed, the Communications Act states that “[e]xcept as provided in paragraph (2), a cable operator shall not disclose personally identifiable information[.]” 47 U.S.C. § 551(b) (emphasis supplied). The Communications Act further states that “[a] cable operator may disclose such information if the disclosure is . . . made pursuant to a court order authorizing such disclosure, if the subscriber is notified of such order by the person to whom the order is directed.” *Id.* Thus, Plaintiff must secure a court order authorizing the release of any responsive documents in Charter’s/Spectrum’s possession that contains a subscriber’s personally identifiable information, or it must obtain the subscriber’s consent. Accordingly, prior to seeking court intervention, on September 23, 2019, Plaintiff requested Defendant’s consent for the ISP’s release of such documents. Defendant failed to respond. On October 30, 2019, Plaintiff followed up on its prior conferral. Defendant responded and demanded a detailed explanation of why such discovery was appropriate. That same day (October 30, 2019), Plaintiff provided details for why each set of documents was relevant and appropriate. However, Defendant has not yet responded to Plaintiff’s e-mail. Plaintiff intends on calling chambers to schedule a discovery dispute conference if they parties are unable to agree.

**Defendant:**

Defendant concurs in the summary provided by plaintiff’s counsel. The parties continue to dispute the scope of certain discovery requests made by plaintiff, and we expect to meet and confer with plaintiff’s counsel expeditiously so that any unresolved disputes can be presented to the Court.

Defendant notes that to date, there has been no direct evidence linking defendant to the allegedly infringing downloads of copyrighted material, and defendant maintains that he was not the individual responsible for such downloads.

Very Truly Yours,

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